

or fund Commitments you made before the public offering.

(b) *Effect of a change in business activity occurring within one year of Licensee's initial Financing*—(1) *Retention of Investment*. Unless you receive SBA's written approval, you may not keep your investment in a Portfolio Concern, small or otherwise, which becomes ineligible by reason of a change in its business activity within one year of your initial investment.

(2) *Request for SBA's approval to retain investment*. If you request that SBA approve the retention of your investment, your request must include sufficient evidence to demonstrate that the change in business activity was caused by an unforeseen change in circumstances and was not contemplated at the time the Financing was made.

(3) *Additional Financing*. If SBA approves your request to retain an investment under paragraph (b)(2) of this section, you may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 107.740.

(c) *Effect of a change in business activity occurring more than one year after the initial Financing*. If a Portfolio Concern becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

- (1) Retain your investment; and
- (2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 107.740.

STRUCTURING LICENSEE'S FINANCING OF ELIGIBLE SMALL BUSINESSES: TYPES OF FINANCING

§ 107.800 Financings in the form of Equity Securities.

(a) You may purchase the Equity Securities of a Small Business. You may not, inadvertently or otherwise:

- (1) Become a general partner in any unincorporated business; or
- (2) Become jointly or severally liable for any obligations of an unincorporated business.

(b) *Definition*. Equity Securities means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint venture interests. If the Financing agreement contains debt-type acceleration provisions or includes redemption provisions other than those permitted under § 107.850, the security will be considered a Debt Security for purposes of § 107.855.

§ 107.810 Financings in the form of Loans.

You may make Loans to Small Businesses. A Loan means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

§ 107.815 Financings in the form of Debt Securities.

You may purchase Debt Securities from Small Businesses.

(a) *Definitions*. Debt Securities are instruments evidencing a loan with an option or any other right to acquire Equity Securities in a Small Business or its Affiliates, or a loan which by its terms is convertible into an equity position, or a loan with a right to receive royalties that are excluded from the Cost of Money pursuant to § 107.855(g)(12). Consideration must be paid for all options that you acquire.

(b) *Restriction on options obtained by Licensee's management and employees*. If you have outstanding Leverage or plan to obtain Leverage, your employees, officers, directors or general partners, or the general partners of the management company that is providing services to you or to your general partner, may obtain options in a Financed Small Business only if:

- (1) They participate in the Financing on a *pari passu* basis with you; or
- (2) SBA gives its prior written approval; or
- (3) The options received are compensation for service as a member of the board of directors of the Small Business, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when